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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/569,976	08/08/2012	JON FEWINS	CRNI.169962	8390

46169 7590 03/30/2017  
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EXAMINER
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BARRETT, RYAN S

ART UNIT	PAPER NUMBER
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2145

NOTIFICATION DATE	DELIVERY MODE
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03/30/2017

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JON FEWINS, RYAN MOOG,  
MARSHA LAIRD-MADDOX,  
TODD JEFFREY REYNOLDS, BRADY TIMMERBERG,  
and  
NITISH AMRAJI

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Appeal 2016-008655  
Application 13/569,976<sup>1</sup>  
Technology Center 2100

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Before CARLA M. KRIVAK, HUNG H. BUI, and  
JEFFREY A. STEPHENS, *Administrative Patent Judges*.

STEPHENS, *Administrative Patent Judge*.

DECISION ON APPEAL  
STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–20, which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> The real party in interest is identified as Cerner Innovation, Inc. App. Br. 3.

*Claimed Subject Matter*

The claimed invention relates to “[s]ystems, methods, computer-readable media, and graphical user interfaces for facilitating integrated data capture with an item group key” and populating case report forms with data from an electronic medical record (EMR). Abstract.

Independent claims 1 and 18, reproduced below, illustrate the subject matter on appeal.

1. A computer storage device having computer-executable instructions embodied thereon, that when executed by one or more computing devices, cause the one or more computing devices to perform a method for facilitating integrated data capture utilizing an item group key, the method comprising:

initiating an integrated data capture workflow from within an Electronic Medical Record (EMR);

receiving from a user a selection of a group of items from the EMR, wherein the group of items includes at least one item indicative of the uniqueness of the group, and at least one item which varies within the unique group;

assigning an item group key to at least one item of the group of items which varies within the unique group, wherein the item group key maintains congruity between the at least one item which varies within the unique group and the data associated with the at least one item which varies within the unique group;

gathering available data associated with the item group key from the EMR;

receiving from a user a selection of available data to include in a case report form; and

populating the case report form with the selection of available data and associated with the item group key.

18. A computer storage device having computer-executable instructions embodied thereon that, when executed, produce a

graphical user interface (GUI) to facilitate integrated data capture utilizing an item group key, the GUI comprising:

a workflow display area configured to display an integrated data capture workflow;

an item group key display area configured to display a group of items that are available to be selected as an item group key;

an indicator display area configured to display an indicator if alternate results for the item group key are available; and

an alternate results display area configured to display a closed menu of the alternate results for the item group key.

### *Examiner's Rejections and References*

(1) Claims 1–20 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Final Act. 2–4.

(2) Claims 18–20 stand rejected under 35 U.S.C. § 102(b) as anticipated by Doherty et al. (US 2004/0220836 A1; Nov. 4, 2004) (“Doherty”). Final Act. 4–5.

(3) Claims 1–17 stand rejected under 35 U.S.C. § 103(a) as obvious over Doherty and Patwardhan et al. (US 2009/0281835 A1; Nov. 12, 2009) (“Patwardhan”). Final Act. 6–12.

## ANALYSIS

### *Rejection under 35 U.S.C. § 101*

Appellants argue claims 1–20 as a group. We select claim 1 as representative. The remaining claims stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(iv).

Claim 1 recites a computer storage device having computer-executable instructions that perform a method for facilitating integrated data

capture utilizing an item group key, the method comprising six steps: (1) initiating an integrated data capture workflow from within an Electronic Medical Record (EMR); (2) receiving from a user a selection of a group of items from the EMR; (3) assigning an item group key to at least one item of the group of items; (4) gathering available data associated with the item group key from the EMR; (5) receiving from a user a selection of available data to include in a case report form; and (6) populating the case report form with the selection of available data and associated with the item group key. The six steps result in a case report form that is populated with data from the EMR.

Appellants argue the Examiner erred in rejecting the claims under 35 U.S.C. § 101 because the Examiner failed to provide a “rationale for characterizing the claims as directed to ‘medical bookkeeping’,” and because “‘medical bookkeeping’ is not a recognized abstract idea within the meaning of 35 U.S.C. § 101.” App. Br. 6 (citing *2014 Interim Guidance on Patent Subject Eligibility*, 79 Fed. Reg. 74618, 74622 (Dec. 16, 2014); *July 2015 Update: Subject Matter Eligibility*, 80 Fed. Reg. 45429 (July 30, 2015)); *see also* Reply Br. 2–4. In this regard, Appellants dispute the Examiner’s characterization of the claims as being directed to the abstract idea of “medical bookkeeping,” because (1) the claims do not recite this language, (2) the Specification does not discuss “medical bookkeeping,” and (3) the Examiner provides “no explanation of why the claims set forth or describe ‘medical bookkeeping.’” App. Br. 6–7.

Appellants also assert the claims are not directed to an abstract idea or a mental process because (1) the claims require “the one or more computing devices to perform a method for facilitating integrated data capture **utilizing an item group key**,” and (2) “it is not a normal mental process to assign an

item group key to at least one item of [a] group of items . . . the item group key maintain[ing] congruity.” Reply Br. 3–4. We are not persuaded by Appellants’ arguments.

In support of the § 101 rejection of claims 1–20, the Examiner finds “the claims are directed to the abstract idea of medical bookkeeping, a method of organizing human activity.” Final Act. 4; *see also* Ans. 3–4. The Examiner reasons that “medical bookkeeping” is a proper characterization of claim 1 because the claim is directed to populating a case report form with data from an Electronic Medical Record (EMR), and Appellants’ Specification and Drawings are concerned with data capture in an EMR. Ans. 3 (citing Spec. Figs. 7–15). We find no reversible error with the Examiner’s findings and agree with the Examiner that claim 1 is directed to an abstract idea.

Title 35 U.S.C. § 101 provides that a new and useful “process, machine, manufacture, or composition of matter” is eligible for patent protection. The Supreme Court has made clear that the test for patent eligibility under Section 101 is not amenable to bright-line categorical rules. *See Bilski v. Kappos*, 130 S. Ct. 3218, 3229–30 (2010). There are, however, three judicially-created exceptions to the broad categories of patent-eligible subject matter in § 101: laws of nature, natural phenomena, and abstract ideas. *See Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012).

In *Alice Corporation Pty, Ltd. v. CLS Bank International*, 134 S. Ct. 2347 (2014), the Supreme Court applies *Mayo*’s “framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of these concepts.” *Alice*, 134 S. Ct. at 2355. The first step is to “determine whether

the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea. *Id.* If the claims are directed to a patent-ineligible concept, the second step in the analysis is to “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78). In other words, the second step is to “search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.* (quoting *Mayo*, 566 U.S. at 72–73) (alteration in original).

Examining the claims as a whole, and using claim 1 as representative, we agree with the Examiner’s finding that the claimed method of populating a case report form with data from an EMR is a method of organizing human activity and is, therefore, an abstract idea, because the finding is supported by the language of the claim itself. Under *Alice*, abstract ideas embrace “fundamental economic practice[s] long prevalent in our system of commerce,” (quoting *Bilski*, 561 U.S. at 611), including “longstanding commercial practice[s]” and “method[s] of organizing human activity.” *Alice*, 134 S. Ct. at 2356.

Here, claim 1 recites “facilitating integrated data capture utilizing an item group key” by “assigning an item group key to at least one item of the group of items,” “gathering available data associated with the item group key from the EMR,” and “populating the case report form with the selection of available data and associated with the item group key” from the EMR. The steps of claim 1 are directed to “organizing of human activity,” that is, the activities associated with managing medical records and obtaining

medical case reports—all mental exercises. Appellants have not persuasively rebutted the Examiner’s findings and have not explained why the use of the claimed “item group key” is not a mental process or a method of organizing human activity. For example, Appellants do not contend that the claims are directed to an improvement in any technology or technical field; rather, Appellants argue only that using or assigning an item group key is not an abstract idea or mental process. Reply Br. 3–4. However, the claims and the Specification do not define the “item group key.” Rather, the Specification provides discussion of non-limiting examples of “item group keys,” which do not preclude the item group key assignment from being performed mentally or without a computer. *See Spec.* ¶¶ 36, 64.

Under step two of the *Alice* framework, we agree with and adopt the Examiner’s findings on page 4 of the Answer. We determine that the additional limitations, taken individually and as a whole in the ordered combination, do not add significantly more than the abstract idea or transform the abstract idea into patentable subject matter. Particularly, the claims “do not include additional elements that are sufficient to amount to significantly more than the abstract idea as they are seen to be mere instructions to implement the abstract idea on a computer.” Ans. 4. Appellants’ sole rebuttal of the Examiner’s findings relies on the claimed item group key. Reply Br. 3–4. However, as discussed *supra*, we are not persuaded that the item group key is not an abstraction that can be mentally assigned to data.

We, therefore, sustain the rejection under 35 U.S.C. § 101 of claims 1–20.

*Rejection of Claims 18–20 under 35 U.S.C. § 102(b)*

Appellants contend Doherty fails to teach “an item group key display area configured to display a group of items that are available to be selected as an item group key,” as recited in claim 18. App. Br. 8–12 (citing Doherty ¶ 66, Fig. 3); Reply Br. 4–5. In particular, Appellants argue that “[w]hen ‘item group key’ is properly interpreted consistent with the use of the phrase in the specification, Doherty does not teach an item group key.” App. Br. 11–12 (citing Spec. ¶¶ 9, 36, 45).

The Examiner finds and we agree, Doherty discloses an identification/selection of a database subset, which is commensurate with the term “item group key” as claimed. Ans. 5 (citing Doherty Fig. 3); Final Act. 2. The Examiner finds Doherty’s user command identifies a subset of records in a database, in order to access electronic patient healthcare record processing information in the database as illustrated in Doherty’s Figure 3, step 3300. Ans. 5; Final Act. 5; *see also* Doherty ¶ 62 (describing data derived in response to a user command, the data indicating a first number of electronic patient healthcare records selected based on events occurring during a predetermined time period). Appellants do not persuasively explain why the claimed “item group key” is different from Doherty’s identification of a database subset.

Appellants rely on paragraphs 63 and 64 of their Specification for disclosing an “item group key” is assigned to at least one item of a group of items representing data to be populated from an EMR into a case report form, and contend their Specification “makes clear that assigning the item group key is separate from selecting a subset of data” as taught by Doherty. Reply Br. 5 (citing Spec. ¶¶ 63–64). These paragraphs in Appellants’ Specification, however, describe gathering from the EMR “available data

associated with the item group key,” not unlike Doherty’s records’ data identification based on criteria (e.g., predetermined time period criteria). *See* Spec. ¶ 64; Doherty ¶¶ 61–62, 66, Fig. 3. Appellants have not provided sufficient evidence or reasoning to persuade us that Doherty’s selection of a database subset is different from data capture using the claimed “item group key,” particularly, as Appellants’ claim 18 is broad and does not recite the argued “assigning the item group key is separate from selecting a subset of data” (*see* Reply Br. 5).

In light of the broad terms recited in claim 18, Appellants have failed to clearly distinguish their claimed invention over Doherty. Thus, we sustain the rejection of claim 18 under 35 U.S.C. § 102(b) as anticipated by Doherty.<sup>2</sup> For the same reasons, we also sustain the rejection of dependent

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<sup>2</sup> In the event of further prosecution, we recommend the Examiner consider whether the disputed limitations of claim 18 are directed to non-functional descriptive material, which are not given patentable weight. We note that claim 18 recites only a graphical user interface (GUI) provided with several display areas for displaying different types of information, but none of the information is used to provide any new and unobvious functional relationship relative to the GUI or any storage device. As such, the Examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. *See, e.g., In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 1583–84 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1338 (Fed. Cir. 2004); *see also Ex parte Mathias*, 84 USPQ2d 1276, 1279 (BPAI 2005) (informative) (“[N]onfunctional descriptive material cannot lend patentability to an invention that would have otherwise been anticipated by the prior art.”), *aff’d*, 191 Fed. Appx. 959 (Fed. Cir. 2006) (Rule 36); *Ex parte Curry*, 84 USPQ2d 1272, 1274 (BPAI 2005) (informative) (“Nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious.”), *aff’d*, No. 06-1003 (Fed. Cir. 2006) (Rule 36).

claims 19 and 20, which are not argued separately with particularity. App. Br. 12.

*Rejection of Claims 1–17 under 35 U.S.C. § 103(a)*

Appellants argue Doherty and Patwardhan fail to teach or suggest an item group key, and assigning an item group key to at least one item of the group of items which varies within the unique group, wherein the item group key maintains congruity between the at least one item which varies within the unique group and the data associated with the at least one item which varies within the unique group, as recited in claim 1. App. Br. 12–15; Reply Br. 6–7. Appellants contend “the cited paragraphs of Doherty do not teach or suggest an item group key,” and the cited portion of Patwardhan merely “references a drop-down menu with sub-menus” without any “indication of an assignment of an item group key, as that term is used in the specification, or that an item group key maintains congruity” as claimed. App. Br. 13–14; *see also* Reply Br. 7. We do not agree.

Rather, we agree with the Examiner that Patwardhan’s Figure 3 discloses the claimed *item group key* as the patient’s name, the claimed *item which varies within a unique group* as the patient’s diagnosis criteria within the illustrated group of data fields, and the claimed *data associated with the item which varies* as the patient’s diagnosis classification. Ans. 6 (citing Patwardhan Fig. 3, patient’s name at input box 31, patient’s diagnosis criteria at input box 41, patient’s diagnosis classification at input boxes 42–43). As further recognized by the Examiner, Patwardhan’s patient name (item group key) “*maintains congruity* between the diagnosis criteria and the diagnosis classification” to avoid medical record mix-ups. Ans. 6 (emphasis added).

Appellants respond that Patwardhan's patient name cannot be the claimed item group key because the patient name does not maintain congruity between the patient's *diagnosis criteria* and the patient's *diagnosis classification*. Reply Br. 6–7. Particularly, Appellants argue Patwardhan's patient name does not maintain the claimed congruity because “mismatched diagnostic criteria and diagnostic classifications could occur within a single patient's medical record.” Reply Br. 7. Appellants' argument is not commensurate with the scope of claim 1, as the claim does not specify that such mismatch (i.e., between the item which varies and the data associated with the item which varies) *cannot occur* within the unique group whose *item group key maintains congruity*.

Further, Appellants' Specification describes “congruity” as joining patient record fields based on date or time frame to prevent mix and match results from different fields in the EMR. *See* Spec. ¶¶ 34, 63. Patwardhan's patient's name similarly prevents mixing data between patients because the patient's name (e.g., Myra Smith in Patwardhan's Fig. 3) associates Myra's diagnosis criteria (pathological) with the correct diagnosis classification (cardiovascular system hypertension) for Myra. Thus, Patwardhan's recording of patient information by patient's name is commensurate with the broad description of the *item group key maintaining congruity* in Appellants' Specification.

We also are not persuaded by Appellants' argument that there is no reason to combine Doherty and Patwardhan because Doherty “would not seem to require or benefit from the use of an item group key that maintains congruity.” App. Br. 14–15 (citing Doherty ¶ 62). The Examiner articulates a reason with “a rational underpinning” for combining Doherty's patient healthcare report customization with Patwardhan's individualized medical

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prescription scheduler, namely to accurately populate a patient's report with a selected subset of data and maintain compliance with medical information handling rules (e.g., HIPAA legislation). Ans. 7 (citing Doherty ¶ 49); Final Act. 7–8; *see also* Doherty ¶ 62. We agree with the Examiner's reasoning.

Accordingly, we are not persuaded the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a) over Doherty and Patwardhan. Thus, we sustain the rejection of claim 1, and, for the same reasons, the rejection of claims 2–13, which are not argued separately. App. Br. 15. For the same reasons, we sustain the rejection of independent claim 14 argued for substantially the same reasons as claim 1, and its dependent claims 15–17 not separately argued. App. Br. 12, 15.

#### DECISION

We affirm the Examiner's decision rejecting claims 1–20 under 35 U.S.C. § 101.

We affirm the Examiner's decision rejecting claims 18–20 under 35 U.S.C. § 102(b).

We affirm the Examiner's decision rejecting claims 1–17 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED